

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1721.01
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: March 26, 2001
DATE OF REPORT: April 25, 2001
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 22, 2001

COMPLAINT ISSUES:

Whether the Peru Community Schools and the Wabash-Miami Area Programs violated:

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's *individualized education program* (the "*IEP*") as written, specifically:

- a. failing to implement the student's behavioral intervention plan as written;
- b. failing to provide identified accommodations (extra time); and
- c. failing to provide counseling services.

511 IAC 7-27-4(c)(2) and (3) with regard to the school's alleged failure to consider the report of the student's psychiatrist and strategies to address the student's behavior in developing or revising the student's *IEP*. (The original notification letter erroneously cited 511 IAC 7-27-4(a)(2) and (3).)

FINDINGS OF FACT:

1. The student (the "Student") is thirteen years old and is in the sixth grade at the School. The Student is eligible for special education and related services as a student with an other health impairment ("OHI").
2. The Student's annual case review (the "ACR") was held on April 11, 2000, and the CCC wrote the *IEP* for the 2000-01 school year. The *IEP* includes providing extra test time for the Student.
3. No documentation was presented to indicate that the Student was provided extra test time during the school year. The local director of special education (the "Director") reported that no documentation was maintained to indicate whether the Student was provided extra time when taking tests.
4. The Student's behavior plan includes the following interventions.
 - May earn points (tickets) for assignments completed.
 - May earn up to 6 - 8 tickets a day depending on performance.
 - May choose to spend tickets at the end of day or save and spend at later time.
 - Positive notes home to parents.
 - Do not draw unnecessary attention to tics when they occur.
 - Give daily classroom responsibilities.
 - Give opportunity to go to designated area to cool down.
 - Do not react negatively to negative remarks made by student.

The behavior plan includes the following discipline procedures.

- Earned tickets can be taken away for not following directions, arguing, refusing to do work, or disturbing others.
- If student doesn't respond to ticket reinforcers, he must leave the classroom due to disruptive or inappropriate behavior, and will be given a choice of consequences. The choices will be offered by the teacher's discretion. Choices include going to the time-out room, time-out outside of room, see the counselor, or after-school detention.
- If student doesn't choose consequence and behavior escalates to point of requiring assistance to leave the classroom, student will be required to participate in Independent Study Suite the next school day. Work will be under the direction of his teacher.
- Follow school procedures.
- Utilization of alternative scheduling to relieve stress and to maximize student's potential.
- All attempts possible will be made to keep student at school.

5. The Student incurred seven discipline reports (the "Discipline Reports") between November 13, 2000, to March 7, 2001. As a result of the Discipline Reports the Student was given a five-day out-of-school suspension on November 15, 2000, and a two-day out-of-school suspension on February 5, 2001. According to the March 16, 2001, Discipline Report, the Student was sent home. The remaining Discipline Reports indicate that the Student was either refocused, referred to his teacher who had a conference with him, and then returned to the classroom, or referred to the office to complete work with the Assistant Principal. The March 7, 2001, Discipline Report indicates that the Student was referred to the office where he subsequently requested to stay.
6. The Assistant Principal submitted to the Division a chronological log of the student's behavior that she compiled between October 5, 2000, and March 16, 2001. Many of the incidents indicate that the Student was either removed to another setting as a result of behavior outbursts, refocused, or given a choice as to where he would like to go to regain composure.
7. The Discussion Summary in the *CCC Report* from the April 11, 2000, CCC meeting includes the following. "Counseling for anger management will begin later this month. Parents have pursued counseling."
8. The Case Conference Recommendations section of the April 11, 2000, *CCC Report* states the following.
 - [Student] will receive direct LD instruction for math and lang. arts.
 - SEH support for all assignments as needed.
 - Gen. ed. science + social studies.
 - * Behavior plan included.
 - * ISTEP w/accommodations."
9. The related services checklist on the April 11, 2000, *IEP* lists "Counseling (Type of Counseling)" as a related service for the CCC to consider. However, "None Required" (meaning related services) is checked on the list.
10. The Complainant submitted two letters from the Student's psychiatrist to the Division. The letters are dated February 6, 2001, (the "First Letter") and February 27, 2001 (the "Second Letter"). The First Letter is a list of the Student's medications, and includes the following statements "At this time he tolerates his medications with no significant side effects. Should you have any questions, please do not hesitate to contact me." The Second Letter states that the Student's "disease is responsible for the majority of [Student's] temper tantrums." The following statement is also included in the Second Letter. "It is essential to realize that during similar episodes, [Student] does

not have any significant control over [Student's] behavior, in the same manner that [Student] cannot control [Student's] tics." The Second Letter concludes with the psychiatrist stating that it was hoped that the severity and frequency of the Student's episodic agitation would subside by adjusting the Student's medications. The Second Letter does not contain any evaluative or assessment information. The psychiatrist included an updated list of the Student's medications in the Second Letter.

11. The CCC met on February 22, 2001, and additional behavioral interventions were recommended to be utilized with the Student. The Discussion Summary of the February 22, 2001, *CCC Report* states "Dr. has told parents that the biggest problem is the impulse control." There are no other entries in the Discussion Summary regarding the Student's doctors or the psychiatrist. The *CCC Report* also states, "[Complainant] said that they have been through counselors who have done well with [Student]. They are searching for a new counselor now – someone who will be able to work with [Student] and who will be there for a period of time."
12. The following includes additional behavioral interventions to be attempted as a result of the February 22, 2001, CCC meeting.
 - Provide [Student] with something to hit/kick when angry (i.e. bean bag, punching bag, foam bats, or pillows).
 - Talk with school counselor, principal, assistant principal, ED teacher.
 - Give option to go to gym and run laps or do push ups as consequence.
 - Encourage [Student] to "vent" in specific location (possibly ED room).
 - No allow to call home from school when having hard time.
 - No ISS - [Student] likes that.
 - Go to office or phone home when having a good day.
 - [School police officer] may be called if [Student's] behavior is escalating and not responding to school personnel.
 - Refocusing room.
13. The Coordinator reported that on February 28, 2001, the Complainant brought a letter dated February 27, 2001, to the School from the Student's psychiatrist.
14. The CCC met on March 2, 2001, and discussed a modified day for the Student if behavior problems continued to persist. The Coordinator reported that no letter from the Student's psychiatrist was ever presented at the March 2, 2001, CCC meeting, nor is there discussion regarding the psychiatrist's letter included in the March 2, 2001, *CCC Report*.

CONCLUSIONS:

- 1.a. Findings of Fact #4, #5, #6, and #11 indicate that the School implemented the Student's behavior plan as written. No violation of 511 IAC 7-27-7(a) occurred with regard to implementing the Student's behavior plan.
- 1.b. Findings of Fact #2 and #3 indicate that no documentation was provided to show that the Student was provided extra test time as stated in the *IEP*. A violation of 511 IAC 7-27-7(a) occurred with regard to providing the Student extra test time.
- 1.c. Findings of Fact #7, #8, and #9 indicate that the CCC did not recommend counseling services for the Student, nor did the *IEP* include counseling as a related service for the Student. Further, Finding of Fact #10 indicates that the Complainant had been arranging counseling services for the Student. No violation of 511 IAC 7-27-7(a) occurred with regard to providing counseling services to

the Student.

2. Finding of Fact #10 indicates that the First Letter is only a list of the Student's medications, and does not include any other medical information, nor does it contain any behavioral or diagnostic information. The Complainant did not provide a copy of the First Letter to the School. Findings of Fact #2, #10, and #11 indicate that the Complainant brought the Second Letter to the School after the *IEP* for the 2000-01 school year was written, and after the CCC met on February 22, 2001. Findings of Fact #10 and #14 also indicate that no evaluative information was contained in the Second Letter; and therefore, no consideration of the Second Letter by the CCC was required unless said letter was specifically presented at the CCC meeting. Further, Findings of Fact #4 and #12 indicate that the CCC discussed and revised the behavioral interventions to be used with the Student, along with discussing possible placement options in order to better address the Student's behavioral problems. No violation of 511 IAC 7-27-4(c)(2) and (3) occurred.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

The Peru Community Schools and the Miami Area Programs shall:

1. notify all professional personnel at the School regarding the requirement to implement student *IEPs*, specifically providing identified accommodations as they are written in student *IEPs*. A copy of the notification, along with a list of all personnel by name and title who received said notification, shall be submitted to the Division no later than May 25, 2001.

DATE REPORT COMPLETED: April 25, 2001